

Calendar No. 417

103D CONGRESS
2D SESSION

S. 720

[Report No. 103-253]

A BILL

To clean up open dumps on Indian lands, and for
other purposes.

APRIL 25 (legislative day, APRIL 11), 1994
Reported with an amendment

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To clean up open dumps on Indian lands, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 1 (legislative day, MARCH 3), 1993

Mr. MCCAIN (for himself, Mr. INOUE, Mr. REID, and Mr. DASCHLE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

APRIL 25 (legislative day, APRIL 11), 1994

Reported by Mr. INOUE, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To clean up open dumps on Indian lands, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Indian Lands Open
 5 Dump Clean-Up Act of 1993”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 ~~(a) FINDINGS.~~—The Congress finds that—

3 (1) there are over 600 open dumps on Indian
4 lands;

5 (2) these dumps threaten the health and safety
6 of residents of Indian lands;

7 (3) many of these dumps were established and
8 are used by Federal agencies such as the Bureau of
9 Indian Affairs and the Indian Health Service;

10 (4) these dumps threaten the environment; and

11 (5) the United States has a trust responsibility
12 to protect Indian lands.

13 ~~(b) PURPOSES.~~—The purposes of this Act are to—

14 (1) identify the location of all open dumps on
15 Indian lands;

16 (2) assess the relative health and environmental
17 hazards of each dump;

18 (3) develop a priority list to establish the order
19 in which such dumps should be closed in compliance
20 with applicable Federal and tribal standards; and

21 (4) close such dumps in compliance with appli-
22 cable Federal standards, or standards promulgated
23 by an Indian tribal government, if such standards
24 are more stringent than the Federal standards.

1 **SEC. 3. DEFINITIONS.**

2 For the purposes of this Act, the following definitions
3 shall apply:

4 (1) CLOSURE OR CLOSE.—The terms “closure
5 or close” mean all actions necessary to terminate op-
6 erations at open dumps and bring such dumps into
7 compliance with applicable Federal standards, or
8 standards promulgated by an Indian tribal govern-
9 ment, if such standards are more stringent than the
10 Federal standards.

11 (2) DIRECTOR.—The term “Director” means
12 the Director of the Indian Health Service.

13 (3) INDIAN LAND.—The term “Indian land”
14 means—

15 (A) land within the limits of any Indian
16 reservation under the jurisdiction of the United
17 States Government, notwithstanding the issu-
18 ance of any patent, and including rights-of-way
19 running through the reservation;

20 (B) dependent Indian communities within
21 the borders of the United States whether within
22 the original or subsequently acquired territory
23 thereof, and whether within or without the lim-
24 its of a State;

1 (C) Indian allotments, the Indian titles to
2 which have not been extinguished, including
3 rights-of-way running through the same; and

4 (D) land held by Alaska Native villages
5 under the Alaska Native Claims Settlement Act
6 (43 U.S.C. 1600 et seq.).

7 (4) INDIAN TRIBAL GOVERNMENT.—The term
8 “Indian tribal government” means the governing
9 body of any Indian tribe, band, nation, pueblo, or
10 other organized group or community which is recog-
11 nized as eligible for the special programs and serv-
12 ices provided by the United States to Indians be-
13 cause of their status as Indians, including any Alas-
14 ka Native village as defined in section 3(c) of the
15 Alaska Native Claims Settlement Act (43 U.S.C.
16 1602(c)).

17 (5) INVENTORY.—The term “inventory” means
18 a complete listing of the geographic location of all
19 open dumps, an evaluation of the contents of each
20 dump, and an assessment of the impact of each
21 dump on the environment and public health.

22 (6) OPEN DUMP.—The term “open dump”
23 means any facility or site where solid waste is dis-
24 posed of which does not meet the criteria for a sani-

1 tary landfill promulgated under the Solid Waste Dis-
 2 posal Act (42 U.S.C. 6901 et seq.).

3 ~~(7) POSTCLOSURE MAINTENANCE.~~—The term
 4 “postclosure maintenance” means any activity un-
 5 dertaken at a closed solid or hazardous waste facility
 6 to maintain the integrity of containment features,
 7 monitor compliance with applicable performance
 8 standards, or remedy any situation or occurrence
 9 that violates standards consistent with the Solid
 10 Waste Disposal Act (42 U.S.C. 6901 et seq.).

11 ~~(8) SOLID WASTE.~~—The term “solid waste” has
 12 the same meaning given such term in the Solid
 13 Waste Disposal Act (42 U.S.C. 6901 et seq.), except
 14 that such term does not include hazardous waste as
 15 defined in such Act.

16 **SEC. 4. INVENTORY BY DIRECTOR OF INDIAN HEALTH**
 17 **SERVICE.**

18 The Director shall—

19 (1) conduct an inventory of open dumps on In-
 20 dian lands;

21 (2) determine the severity of the threat to pub-
 22 lic health and the environment posed by each dump;

23 (3) develop a priority list to determine the order
 24 of closure of such dumps;

1 (4) develop cost estimates for the closure and
 2 postclosure maintenance of open dumps on the pri-
 3 ority list developed under this section; and

4 (5) conduct all activities required to close such
 5 dumps and conduct postclosure maintenance of such
 6 dumps.

7 **SEC. 6. CONTRACT AUTHORITY.**

8 The Director may carry out duties under this Act
 9 through contracts with Indian tribes under the Indian
 10 Self-Determination and Education Assistance Act (25
 11 U.S.C. 450 et seq.).

12 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

13 There are authorized to be appropriated such sums
 14 as may be necessary to carry out this Act.

15 **SECTION 1. SHORT TITLE.**

16 *This Act may be cited as the “Indian Lands Open*
 17 *Dump Cleanup Act of 1994”.*

18 **SEC. 2. FINDINGS AND PURPOSES.**

19 (a) *FINDINGS.—The Congress finds that—*

20 (1) *there are at least 600 open dumps on Indian*
 21 *lands;*

22 (2) *these dumps threaten the health and safety of*
 23 *residents of Indian lands and contiguous areas;*

1 (3) many of these dumps were established or are
2 used by Federal agencies such as the Bureau of In-
3 dian Affairs and the Indian Health Service;

4 (4) these dumps threaten the environment;

5 (5) the United States holds most Indian lands in
6 trust for the benefit of Indian tribes and individuals;
7 and

8 (6) most Indian tribal governments lack the fi-
9 nancial and technical resources necessary to close and
10 maintain these dumps in compliance with applicable
11 Federal laws.

12 (b) *PURPOSES.*—The purposes of this Act are to—

13 (1) identify the location of open dumps on In-
14 dian lands;

15 (2) assess the relative health and environmental
16 hazards of such dumps; and

17 (3) provide financial and technical assistance to
18 Indian tribal governments, either directly or by con-
19 tract, to close such dumps in compliance with appli-
20 cable Federal standards and regulations, or standards
21 promulgated by an Indian tribal government, if such
22 standards are more stringent than the Federal
23 standards.

1 **SEC. 3. DEFINITIONS.**

2 *For the purposes of this Act, the following definitions*
3 *shall apply:*

4 (1) *CLOSURE OR CLOSE.*—*The term “closure or*
5 *close” means the termination of operations at open*
6 *dumps on Indian land and bringing such dumps into*
7 *compliance with applicable Federal standards and*
8 *regulations, or standards promulgated by an Indian*
9 *tribal government, if such standards are more strin-*
10 *gent than the Federal standards and regulations.*

11 (2) *DIRECTOR.*—*The term “Director” means the*
12 *Director of the Indian Health Service.*

13 (3) *INDIAN LAND.*—*The term “Indian land”*
14 *means—*

15 (A) *land within the limits of any Indian*
16 *reservation under the jurisdiction of the United*
17 *States Government, notwithstanding the issuance*
18 *of any patent, and including rights-of-way run-*
19 *ning through the reservation;*

20 (B) *dependent Indian communities within*
21 *the borders of the United States whether within*
22 *the original or subsequently acquired territory*
23 *thereof, and whether within or without the limits*
24 *of a State; and*

1 (C) *Indian allotments, the Indian titles to*
2 *which have not been extinguished, including*
3 *rights-of-way running through the same.*

4 (4) *INDIAN TRIBAL GOVERNMENT.*—The term
5 *“Indian tribal government” means the governing*
6 *body of any Indian tribe, band, nation, pueblo, or*
7 *other organized group or community which is recog-*
8 *nized as eligible for the special programs and services*
9 *provided by the United States to Indians because of*
10 *their status as Indians.*

11 (5) *INVENTORY.*—The term *“inventory” means a*
12 *listing of the geographic location of all open dumps,*
13 *an evaluation of the contents of each dump, and an*
14 *assessment of the relative impact of each dump on the*
15 *environment and public health.*

16 (6) *OPEN DUMP.*—The term *“open dump” means*
17 *any facility or site where solid waste is being or has*
18 *been routinely and regularly disposed of that has not*
19 *been closed or covered or that does not meet the cri-*
20 *teria for a new municipal solid waste landfill unit*
21 *promulgated pursuant to the Solid Waste Disposal*
22 *Act (42 U.S.C. 6901 et seq.).*

23 (7) *POSTCLOSURE MAINTENANCE.*—The term
24 *“postclosure maintenance” means any activity under-*
25 *taken at a closed solid waste facility on Indian land*

1 *to maintain the integrity of containment features,*
 2 *monitor compliance with applicable performance*
 3 *standards, or remedy any situation or occurrence that*
 4 *violates regulations promulgated pursuant to the*
 5 *Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).*

6 (8) *SOLID WASTE.*—The term “solid waste”
 7 *means any garbage, refuse, sludge from a wastewater*
 8 *treatment plant, water supply treatment plant, or air*
 9 *pollution control facility, and other discarded mate-*
 10 *rial, including solid, liquid, semisolid, or contained*
 11 *gaseous material resulting from industrial, commer-*
 12 *cial, mining, and agricultural operations, and from*
 13 *community activities, but does not include solid or*
 14 *dissolved materials in domestic sewage, or solid or*
 15 *dissolved materials in irrigation return flows or in-*
 16 *dustrial discharges that are point sources subject to*
 17 *permit under section 402 of the Federal Water Pollu-*
 18 *tion Control Act (33 U.S.C. 1342), or source material,*
 19 *special nuclear material, or by-product material as*
 20 *defined in section 11 of the Atomic Energy Act of*
 21 *1954 (42 U.S.C. 2014).*

22 **SEC. 4. AUTHORITY OF THE DIRECTOR OF THE INDIAN**
 23 **HEALTH SERVICE.**

24 (a) *INVENTORY.*—Upon request by an Indian tribal
 25 *government, the Director shall—*

1 (1) *conduct an inventory of open dumps on the*
2 *Indian lands which are subject to the authority of the*
3 *Indian tribal government;*

4 (2) *determine the relative severity of the threat*
5 *to public health and the environment posed by each*
6 *dump based on information available to the Director*
7 *and the Indian tribal government, unless the Direc-*
8 *tor, in consultation with the Indian tribal govern-*
9 *ment, determines that actions such as soil testing or*
10 *water monitoring would be appropriate in the cir-*
11 *cumstances; and*

12 (3) *develop cost estimates for the closure and*
13 *postclosure maintenance of such dumps.*

14 (b) *ASSISTANCE.*—*Upon completion of the activities*
15 *required to be performed pursuant to subsection (a), the Di-*
16 *rector shall, subject to subsection (c), provide financial and*
17 *technical assistance to the Indian tribal government to*
18 *carry out the activities necessary to—*

19 (1) *close such dumps; and*

20 (2) *provide for postclosure maintenance of such*
21 *dumps.*

22 (c) *CONDITIONS.*—*All assistance provided pursuant to*
23 *subsection (b) shall be made available on a site-specific*
24 *basis in accordance with priorities developed by the Direc-*
25 *tor. Priorities on a specific reservation shall be developed*

1 *in consultation with the Indian tribal government. The pri-*
2 *orities shall take into account the relative severity of the*
3 *threat to public health and the environment posed by each*
4 *open dump and the availability of funds necessary for clo-*
5 *sure and postclosure maintenance.*

6 **SEC. 5. CONTRACT AUTHORITY.**

7 (a) *AUTHORITY OF DIRECTOR.*—*To the maximum ex-*
8 *tent feasible, the Director shall carry out duties under this*
9 *Act through contracts, compacts, or memoranda of agree-*
10 *ment with Indian tribal governments pursuant to the In-*
11 *dian Self-Determination and Education Assistance Act (25*
12 *U.S.C. 450 et seq.), section 7 of the Act of August 5, 1954*
13 *(42 U.S.C. 2004a), or section 302 of the Indian Health Care*
14 *Improvement Act (25 U.S.C. 1632).*

15 (b) *DEMONSTRATION PROJECTS.*—(1) *The Director*
16 *may establish and carry out a program providing for dem-*
17 *onstration projects involving open dumps on Indian land.*
18 *It shall be the purpose of such projects to determine if there*
19 *are unique cost factors involved in the cleanup and mainte-*
20 *nance of open dumps on such land, and the extent to which*
21 *advance closure planning is necessary. Under the program,*
22 *the Director is authorized to select three Indian tribal gov-*
23 *ernments to participate in such demonstration projects.*

1 (2) *Criteria established by the Director for the selection*
2 *and participation of an Indian tribal government in the*
3 *demonstration project shall provide that—*

4 (A) *in order to be eligible to participate, an In-*
5 *dian tribal government must have one or more exist-*
6 *ing open dumps on the Indian lands that are under*
7 *its authority, and have a plan for the closure of each*
8 *such dump;*

9 (B) *at least one of the Indian tribal governments*
10 *selected by the Director shall proceed under a contract*
11 *entered into pursuant to the Indian Self-Determina-*
12 *tion and Education Assistance Act; and*

13 (C) *at least one of the Indian tribal governments*
14 *selected by the Director shall permit the Indian*
15 *Health Service to directly provide for the cleanup and*
16 *maintenance.*

17 (3) *No demonstration project shall be funded for more*
18 *than 3 fiscal years.*

19 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

20 (a) *GENERAL AUTHORIZATION.—There are authorized*
21 *to be appropriated such sums as may be necessary to carry*
22 *out this Act.*

23 (b) *FUNDING SOURCE.—The activities required to be*
24 *performed by the Director under this Act shall only be fund-*
25 *ed from appropriations made pursuant to this Act and such*

1 *activities shall be coordinated with activities related to solid*
2 *waste and sanitation facilities funded pursuant to other*
3 *authorizations.*

4 ***SEC. 7. DISCLAIMERS.***

5 *(a) AUTHORITY OF DIRECTOR.—Nothing in this Act*
6 *shall be construed to alter, diminish, repeal, or supersede*
7 *any authority conferred on the Director pursuant to section*
8 *302 of the Indian Health Care Improvement Act (25 U.S.C.*
9 *1632), and section 7 of the Act of August 5, 1954 (42 U.S.C.*
10 *2004a).*

11 *(b) EXEMPTED LANDS AND FACILITIES.—This Act*
12 *shall not apply to open dump sites on Indian lands—*

13 *(1) that comprise an area of one-half acre or less,*
14 *and that are used by individual families on lands to*
15 *which they hold legal or beneficial title;*

16 *(2) of any size, that have been or are being oper-*
17 *ated for a profit; or*

18 *(3) where solid waste from an industrial process*
19 *is being or has been routinely disposed of at a pri-*
20 *vately owned facility in compliance with applicable*
21 *Federal laws.*